UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

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In Re:	) Case No. 19-30088
	) Chapter 11
PG&E CORPORATION AND PACIFIC GAS AND ELECTRIC COMPANY,	)
	) San Francisco, California
	) Friday, May 15, 2020
Debtors.	) 11:00 AM
_____	)

HEARING ON STIPULATION BY AND AMONG THE PLAN PROPONENTS, THE OFFICIAL COMMITTEE OF TORT CLAIMANTS, THE ADVENTIST HEALTH CLAIMANTS, THE PARADISE RELATED ENTITIES, AT&T, AND COMCAST REGARDING FIRE VICTIM TRUST DOCUMENTS ISSUES FILED BY ADVENTIST HEALTH SYSTEM/WEST AND FEATHER RIVER HOSPITAL [7050]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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PG&E Corp. And Pacific Gas And Electric Co

SAN FRANCISCO, CALIFORNIA, FRIDAY, MAY 15, 2020, 11:00 AM

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(Call to order of the Court.)

THE COURT REPORTER: -- (Audio begins midsentence) matter of PG&E Corporation. One moment, Your Honor, while I bring in the parties.

THE COURT: All right. Do you have any further announcements, Ms. Parada?

THE CLERK: No, Your Honor. We are recording.

THE COURT: All right.

Well, good morning to everyone on the call. And this is our third try, and hopefully third time is the charm. As you all know, we're on a new platform using the Zoom and I want to make a couple of comments about the way we're doing it from the Court's point of view. From our point of view, obviously, it's really different from the CourtCall experience and I'm sure many of you have lots of Zoom experience, but perhaps not in this format. And it's not even the same as the procedures that, I understand, that Judge Donato has followed, at least on one prior PG&E hearing and perhaps next week.

So let me just give you some background. We have this program or the court system, but it's really a Zoom product. And so the Zoom terminology uses the words panelists and attendees. So you who are on the screen, and I see seven or six people, seven, plus me, you are, for Zoom purposes,

described as panelists. Funny thing to call you as a lawyer appearing in court for your client, it's more like being on Jeopardy, but that's the Zoom terminology. And everyone else who is listening or watching, or at least watching for sure, the term is attendees. And I want to make sure you're clear. We found, from experience and testing, including Judge Hammond, who's done this two or three times in another matter, that there's more confusion if we have too many people in the virtual courtroom, or just turn that into Zoom language, too many panelists.

So I know we have dozens and dozens, if -- well, according to my count on my screen, over 200 people observing as attendees, or some number, and at least at the moment, just a small number of you are on the screen for me and I see you as panelists, but obviously I see you as lawyers preparing to present your case.

When you present your case, you will be featured on the screen for my purposes, but when you're finished, perhaps in this case it won't be the same, but we will move you out of the virtual courtroom, back to the attendee category. It doesn't change anything; you'll see the same thing and hear the same thing -- and then someone else who is scheduled to be heard will be moved up by the courtroom deputy, Ms. Parada, to panelist status. And if, at the end of the hearing, there's a need for me to consider calling on or letting someone else

speak, we'll deal with that as we come to that. For now, because we have a particular agenda and I have given you a particular assignment for speaking, I'm going to stick with that until we have to make a change.

I'm going to make an announcement -- that's the end of the Zoom announcement -- an announcement that is substantive. On Tuesday, I heard the arguments on the motion to designate the ballots. I am going to just tell you now, I've made up my mind, I'm going to deny that motion. I've concluded that there was no violation of Rule 2019 and there was no violation of Bankruptcy Code Section 1126.

We've been very busy the last few days, as I'm sure you have, and I intend to issue a written decision explaining, in more detail than one sentence, my reasoning, but for those of you that have been following this case and obviously feel strongly about this, that is the ruling. It's not an appealable order at this point. It's not an order at this point. It's just an announcement. And I am not inviting any discussion on the subject; I'm just giving you the news, and but for a few problems that we were dealing with, not the least of which is an awful lot of reading that Ms. Winthrop and Mr. MacConaghy and others gave me in the last two or three days, I just haven't been able to turn things around as quickly.

And I'm going to make a couple of other general announcements about today's motion. The briefs are extensive

and I compliment the writers, but I want to make sure that we focus today on a couple of things that, in my mind, this is not about today and I urge counsel not to focus on these issues. The first was that this is not about the integrity or the qualification of Justice Trotter or Misiani (phonetic). There's a lot of inks basted on that subject. Their reputations are not in doubt, and to the extent that there's at least a question of the rules under which they will be operating, I certainly don't discourage any discussion about that.

This is also not about the history of the negotiations that led to the restructuring agreements and, particularly, the agreement between the TCC and the fire victims and the debtors. And again, the briefing is adequate and it goes into great detail, but I want to focus not on the history, but rather on what I'm supposed to do about it given the challenges that have been made by a small group of objectors; small in number, but large in dollars.

This is also not about revisiting the tragedies of the fires: 2015, 2017, 2018. I am painfully aware, as all of you are and all of your clients are, of the tens of thousands of humans and families and people, and where lives were devastated. And to the extent that those questions have been addressed in the briefs, they're fine. It's there and it's history and we can't change it, but I don't want to waste time

focusing in on it today. Like it or not, the principle corporate parties that are represented by their counsel today are also victims of the fires. And to the extent that some might say, well, a corporation like Comcast or a big hospital like Adventist is not the same. Well, it is the same for purposes of our analysis here today. Again, like it or not, the fire victims who lost their lives or their families or their homes, or the corporate entities that lost substantial dollars, they are in the same class for this bankruptcy and under the plan, the issues are the same. So I urge you not to focus on those issues.

I am not going to try to interfere with the arguments that counsel presented, but I would like to at least ask the principle speakers to focus on a couple of the following issues, and I've kind of identified what looked like the big-ticket items, from my point of view. They're all big-ticket, but the major ones appear to be, is it proper or fair for a procedure that will lack any judicial oversight. It's not personal to me. It's not Article III versus Bankruptcy Court versus State Court. It is no judicial oversight, and certainly Mr. MacConaghy, representing the TCC, has focused on the difference, well, his difference between the treatment of a claim and the impairment of a claim. And so I -- again, I'll invite Ms. Winthrop and the others to tell me why a procedure that has been, we assume, tentatively accepted -- I don't know

what the votes are, but accepted by the class fire victims, why the will of those majority, if they are the majorities, shouldn't be honored, and therefore, that means that the so-called judicial oversight gives way to what is a consensual process, nonjudicial, where the impaired claims are what they are, but the treatment will be in accordance with the trust.

Second issue that seems to me to be heavily dealt with in the briefs is the collateral source doctrine or, reduced to its simple terms, the question of whether there's double payment or whether there's proper credits to avoid the issue. We're here to focus on the legal authorities that have been cited: does the Ivanhoe case control, or does the California cases that Mr. MacConaghy has cited? I'm not going to name them all; you know what they are.

And I guess I would also ask Mr. MacConaghy, when you make your argument, to focus on the refinement of what happens when an insurer is obligated to pay but hasn't paid or can't pay? I hate to be Mr. Cynic, but what if an insurer, an insurance company, goes under, goes out of business, goes insolvent and is unable to pay its insured? What does that do to the formulate and the analysis in the trust that says that there must be a credit for payments that have been made or expected to be made?

And then turning back, at least, to a slight refinement of the question of oversight, I would ask if Mr.

MacConaghy, again, you've painted a gloomy picture that this poor judge, or some other poor judge might, under the objectors' scheme, have to deal with 75,000 claims. I don't really think that is likely to happen, and so I need to hear from both sides as to what would realistically happen if the process that is contemplated by the trust runs its same course. It would seem to me that hundreds, if not thousands, of people or claims will be resolved without ever triggering any need to have judicial oversight.

The final question, then, is just -- or not a question. It's what influences me, and I'm trying to keep in mind here, is this notion that same treatment is not the same as same outcome. And I would ask the objectors to focus on why they believe that the structure that has been put together by the proponents of today's procedure shouldn't be permitted to go forward, notwithstanding the fact that there may be different outcomes.

So that's the end of the point I'm going to make by way of opening comments. Ms. Winthrop, I've asked you to -- or identified you as the lead arguer. Have you and your colleagues divided up your time and figured out how to reserve it and share it?

MS. WINTHROP: Good morning, Your Honor. Rebecca Winthrop on behalf of the Adventist Health claimants. We have, and I will first turn it over to Mr. Goldblatt, who promised to

lead the charge, and he will explain how we're going to divvy up the time.

THE COURT: Thank you.

Good morning, Mr. Goldblatt -- or good afternoon, perhaps for you.

MR. GOLDBLATT: Thank you, Your Honor. Craig Goldblatt representing Comcast.

On behalf of the ad hoc group of business claimants, we very much appreciate the opportunity to be heard on these issues and the direction that the Court just provided with respect to the matters before you today.

With the Court's permission, I will spend fifteen minutes addressing the question whether the plan may lawfully deprive creditors of the right to have this Court resolve disputes related to claims allowance. Then Mr. Weiss, on behalf of the Paradise Entities and Ms. Winthrop on behalf of Adventist, will address for a total of fifteen minutes the deductions for potentially available insurance. Next, Mr. Mintz, on behalf of AT&T, will address for ten minutes the remaining issues in our objection. And if my math is right, that should leave five minutes for rebuttal, which Mr. Mintz will handle, with respect to all of the issues in our group's objection. And I believe along the way we will address the points that Your Honor raised at the outset. So with the Court's permission, I'd be happy to begin.

THE COURT: I'm going to let you begin, but I'm very skeptical that good lawyers would reserve all of five whole minutes for rebuttal, but go for it. We'll see what happens.

MR. GOLDBLATT: Okay. Well, thank you, Your Honor.

So turning to the merits of the first issue. As we set out in our objection, the language of Sections 501 and 502 of the Bankruptcy Code is clear. Section 501 provides for the filing of proofs of claim. Section 502(a) says that a proof of claim is deemed allowed unless it is objected to, and Section 502(b) says that when such an objection is filed, the Court shall determine the amount of such claim as of the date of the filing of the petition.

The trust procedures that have been filed would do precisely the opposite. They leave the determination of whether a claim that was validly filed with this Court is entitled to payment, to the discretion of the Fire Victim Trust. And as Your Honor said, our point in this regard does not at all relate to the integrity or good faith of the Trustee. This is a structural question, not about the individuals who are administering the trust, in the least bit.

The trust procedures state that the Trustee determination will be final, binding, and nonappealable, and his --

THE COURT: Sort of like an arbitrator, what an arbitrator would do, right, in an arbitration?

MR. GOLDBLATT: Correct, although the Federal Arbitration Act is quite clear that such an arbitration requires the consent of the parties to the arbitration and here the Trustee's determination is not subject to review by any court.

THE COURT: Is it the consent of the majority if the plan is voted up?

MR. GOLDBLATT: Our view is that the answer to that is no. And if I may -- if I may explain why?

First of all, we have cited to several cases that have found plans to be unconfirmable, as a matter of law, when they operate to bar a creditor's ability to bring a dispute regarding claims allowance to the Bankruptcy Court. And those include the Filex (phonetic) decision by the Bankruptcy Court of the Southern District of New York, and the Butcher case in the District of Colorado.

Now, we recognize that this case, as Your Honor suggested, involved an exceptionally large number of claims, but this is by no means the first mass tort bankruptcy case that has been filed. I have spent, myself, a large portion of the past twenty years involved in mass tort bankruptcy cases, beginning with the Western Asbestos case I filed in this district in 2002, and there is a tried-and-true path that emerges from those cases; one that traces its roots back to the Johns-Manville bankruptcy in the 1980s.

In every mass tort bankruptcy case of which I am aware, with one exception that I will address in a moment, the plans of reorganization have established procedures much like those set out here, with the exception that they have permitted a claimant that is dissatisfied with the result of the process to access a judicial determination with respect to the allowance of their claim. And what that experience shows, in response to one of the questions Your Honor's raised at the outset, is that virtually every claim gets resolved in that process. Perhaps a handful trickle through to the courts, but history shows that it is no more than that.

Now, the TCC claims that the process that we seek would result in this Court being forced to review 80,000 fire victims claims and delayed payments to victims by years. The actual experience of mass tort bankruptcy cases that now traces back more than thirty years is emphatically to the contrary.

THE COURT: This is the first one like this, right? The mass torts that we've had, that you've identified, are -- well, you go ahead.

MR. GOLDBLATT: So, Your Honor, this is the first case of, to my knowledge, certainly of this magnitude, that involves wildfire claims. The kinds of claims that have been addressed successfully, however, range from asbestos claims to the breast implant claims to silica claims to a whole array of mass torts, each of which involve individual determinations of each

claimants' damages.

I should say also, Your Honor, that on behalf of Comcast, at least, we would certainly hope and expect that our claim would be resolved through the mediation process established through the trust procedures. But in the unlikely event that those efforts were unsuccessful, we believe that we are entitled by law to come to this Court for an adjudication for our proof of claim.

Such a process is consistent with legal requirements. After all, any court could decide to exercise its discretion in favor of directing the parties to engage in mediation. But if those efforts do not succeed, a court cannot deprive a litigant that has validly invoked the Court's jurisdiction, whether by filing a complaint in a district court or by filing a proof of claim in a bankruptcy court, of a judicial adjudication of that claim.

Now, I'd like to turn to the question that Your Honor posed a moment ago and that the TCC makes in response to that argument, which is, in substance, depriving us of our right to a judicial adjudication of our claim is just another form of impairment, the kind of impairment that a class of creditors can impose on others in that class as long as the class votes to accept the plan by the requisite majority. And, Your Honor, that argument is simply wrong as a matter of law, and let me explain why.

Under the Bankruptcy Code, impairment is a planned treatment of an allowed claim that is anything other than payment in full on the effective date or permitting the claim to ride through the bankruptcy so that it can be asserted against the reorganized debtor afterwards. Sections 1123(3) and (4) of the Bankruptcy Code make this point clear. What the Code means by impairment is how the plan treats allowed claims.

THE COURT: I assume you've read my decision in this case in the post-petition interests docket, right?

MR. GOLDBLATT: Yes, Your Honor.

THE COURT: So there's a distinction between what the plan does and what the Code does.

MR. GOLDBLATT: Correct. That distinction, of course, draws on the Third Circuit decision in PPI and the Fifth Circuit decision in Ultra, and those decisions are fully consistent with the position that we're describing now, which is you start with a question of what is your allowed claim. To be sure, there are ways in which the Code might take the nonbankruptcy allowed claim and reduce it. In PPIE, it had to do with the 502(b)(6) cap. In your decision, it was by the disallowance of unmatured interest.

In any event, once the claim is allowed, by starting with nonbankruptcy law then addressing what the plan does, what the Code -- what a plan does by impairment is limited to the treatment of allowed claims. And the process of determining

the amount of the allowed claim is logically antecedent to the question of impairment.

THE COURT: I understand. And you made that point in the brief that as though -- it's not a temporal difference, but it's a logical difference. But why is that -- isn't that circular in its reasoning? Why can't we say, or I say, that your clients claim will be impaired for various reasons, including the fact that it will be adjudicated through a nonjudicial process? That is an impairment. What if there was only one member of the class and the plan said that's the treatment, even if you vote against it?

MR. GOLDBLATT: So, Your Honor, that argument simply proves too much. The logic of the TCC's position, and with respect of the suggestion Your Honor just made, would be that if a majority of the creditors of a class voted in favor of a plan that said claims allowance shall be determined by a random number generator, that would comport with the Bankruptcy Code. That is simply incorrect.

There are things that a majority may bind a minority to, and other rights of individual claimants that are not subject to majority control. And certain statutory protections that the Code provides are outside the scope of majority control. The rights given under Section 501 and 502 to a claims allowance process that comports with the law is not a kind of right that a majority can vote away over a dissenting

minority creditor.

Every creditor is entitled to a claims allowance process that proceeds in accordance with the terms of the Bankruptcy Code.

THE COURT: So let's assume that you're correct and I'm correct that it's not going to be 75,000 claims in the Bankruptcy Court; it might be 7,500, it might only be 75, but how do we fix it going forward? In other words, if I adopt your rule, your theory here, isn't that the end of the game and doesn't that just throw the entire process into a tizzy? Because there is no predicting how it will come out.

MR. GOLDBLATT: So no, Your Honor. We think it's as simple as adding a sentence to the trust procedures that provide that the determination is subject to review in this Court. And as I understand the TCC's position they argue -- and I believe Ms. Winthrop will address this point, they argue that changes with respect, certain changes with respect to insurance would be a material change in the plan that would require starting over. But I don't think even the TCC contends that subjecting the trust's determination to this Court's review is the kind of material change that would require resolicitation.

THE COURT: Well, that's the --

MR. GOLDBLATT: So I don't think it requires starting from scratch.

THE COURT: It would be interesting if they argue that. I'll invite any speaker to address that issue. Okay.

Sorry. You were going to -- you said that there's one case that's different, and I presume you mean the Takata case?

MR. GOLDBLATT: That's correct, Your Honor. The only case, to my knowledge, having done mass tort cases now for more than twenty years, the only case that I know of. And so none of the cases cited in the briefs, including Quigley and G-1 Holdings, Dow, et cetera, those cases all provided, as we would suggest appropriate here, outlet for the option of review of the Trustee's determination to the Court. Takata did that mostly, but there was a narrow class of claims in which, in Takata, the claims were not subject to judicial review.

The most important thing, Your Honor, to know about Takata is, in that case, no claimant objected to the confirmation of the plan on the ground that it improperly cut off their right of access to the bankruptcy court for a claims allowance determination.

And it is undoubtedly true, Your Honor, as Your Honor doesn't need me to tell you, that if one party files a paper in a bankruptcy court, that will effect another party's rights and the effected party does not object to the treatment that is proposed, a court's order can do just about anything, but when such an order is entered without objection and without the issue even being brought to the attention of the bankruptcy

court, it surely does not stand for the proposition that the law permits that outcome to be imposed in some other case, on some other party that does raise a timely objection to what is proposed.

THE COURT: So you're saying that, if somebody shows up in the Takata case now and says, hey, I want a jury right -- well, I thought there was -- I thought there was a narrow opportunity to get there in Takata?

MR. GOLDBLATT: There was for certain classes of claims and not for others, but let me be really clear, Your Honor, and this is the issue in the In re Twins case that was cited by the TCC. I am not saying that once your confirmation order becomes final and unappealable that someone who doesn't show up today or at confirmation to object to it can bring a collateral challenge down the road. That's the issue at In re Twins.

And look, if we had slept on our rights and this plan was confirmed unnoticed to us and we hadn't raised the issue and we showed up later and said, gee, this is wrong. We'd really like to have the right to go to the Court. The confirmed plan that has become final an nonappealable is a binding and enforceable judgement. That much is clear, and it's from a series of cases. So we're not saying that anyone can show up at any time and complain about a plan. It's incumbent on a party who has an issue with what a plan will do

to their rights to raise a timely objection.

THE COURT: But does that --

MR. GOLDBLATT: Well, does that deflate --

THE COURT: -- does that mean that if I'm persuaded by your argument that Comcast and AT&T and Adventist and the other number, a small number of people, who objected on this motion, they're the only ones that are in and have an opportunity?

MR. GOLDBLATT: So, Your Honor, our suggestion, simply as a matter of fairness, is that the plan be amended to give this right to everyone. That said, if the plan were amended to give that right only to us, I don't think that we would have standing beyond that to complain that the plan treats other people unfairly. So that wouldn't be an unheard of form of relief.

We're not ask -- we don't want to be treated better than other people. We're not asking for special treatment. We agree with the proposition that, as a general matter, a plan should provide equal treatment to the creditors within a class. So we aren't asking for something better and different from what others provide, and we don't think it would cause great upset or delay to provide this right to all creditors who are, as Your Honor said at the outset, regardless of the nature of the wildfire injury, all fundamentally creditors who have suffered damages of the same character and hold claims of the same character against the debtor's estate (sic).

THE COURT: Okay. Mr. Goldblatt, by my count, it's time to pass the baton over to Mr. Weis.

MR. GOLDBLATT: Terrific.

THE COURT: (Indiscernible).

MR. GOLDBLATT: Thank you, Your Honor. I appreciate that.

THE COURT: Thank you for your time.

And let me ask you, Mr. Goldblatt, I'll just use you as the test, are you hearing -- do you hear me all right? Are you getting loud and clear?

MR. GOLDBLATT: Yes, I can.

THE COURT: Okay. All right.

Mr. Weiss or Ms. Winthrop, which one?

MR. WEISS: Good morning, Your Honor. David Weiss from Reed Smith, on behalf of the Paradise Entities, and I also hear you just fine, too.

I'm going to address some of the insurance issues that have been raised in the briefing and then I will turn it over to Ms. Winthrop. I will be addressing the collateral estoppel issues and then Ms. Winthrop will be addressing the other issues. But before I get into that, I think some level-setting is in order, with respect to what it is we're asking for and what we think the current trust documents, as written, provide for.

First of all, what we want is for the trust to

properly apply nonbankruptcy state law and bankruptcy law to the treatment of insurance that are maintained by all fire victims. And we think that the proper treatment of insurance benefits all fire victims, whether they're small or large businesses, public entities, nonprofits that provide essential services, like some of our clients, and even individual homeowners. And so the fundamental principle that we espouse is that claims can be reduced by actual payments that are actually received from an insurance company, but there's no basis to reduce claims by some amount attributed to insurance that has not been paid and may never be paid to a claimant by an insurer. One example that Your Honor gave earlier was an insolvent insurer that can't pay a claim, but there are a lot of -- there are other reasons why insurers will not pay claims or don't pay claims, and we shouldn't have our claims reduced when we're not getting paid by the insurer.

Now, what the TCC --

THE COURT: Well, what is the -- what if the insurance company's just playing hardball because the accrual of federal interest is lower than state law, or whatever, some not very substantive reason, but they just take too much time, then the Trustee shouldn't lose the benefit of the offset on that setting, should he?

MR. WEISS: If the insurer is playing hardball, Your Honor, and is denying a claim or refusing to pay all or part of

a claim for good faith reasons, bad faith reasons, the fire victims should not be penalized by that. Insurance companies deny claims all the time and there is disputes about claim denials and we believe that there should be a commercially reasonable process by which the fire victims pursue insurance and try to recover as much as possible, and we all have an incentive to do so. But at the end of the day, and there should be an end of the day, if we haven't been successful in recovering insurance, then we shouldn't have our claims reduced by unpaid insurance amounts, and that's the fundamental principle.

So what the TCC says in their brief regarding the trust documents and insurance we believe does not match what the trust documents actually say. So what they say at page 17 is that, quote, all fire victim claims must be reduced by amounts that have been paid, or will be paid, under insurance policies that cover those damages.

They also said, Your Honor, to get to your point, in their brief that the Trustee cannot disregard an insurance company's coverage denial. And we agree that there should be a credit for amounts that are actually paid, and that's what their case law supports, and I'll get into their cases in a bit, but that isn't what the trust documents provide.

So what the trust documents actually say, Your Honor, is that the Trustee can actually reduce claims by the amount of

insurance limits, whether the insurance is paid or not. They can second-guess the insurance company's coverage positions, so if the insurance company denies coverage and the Trustee wants to say that that's wrong, they can disregard that. If the fire victim assesses coverage and determines, after a good faith, reasonable effort that they don't think they're going to recover anymore, that can be disregarded. Or if the Trustee believes that the victim didn't try hard enough to go after insurance, they can use that to reduce the claim, or they can do any combination of those things.

So what the trust documents allow is for the Trustee to deduct from a fire victim's claim not just amounts that are actually paid, which we agree is acceptable, but the trust documents also allow the Trustee to deduct amounts the Trustee deems should be, quote, payable or otherwise owed to the fire victim under a policy, and the Trustee can reduce the claim for any unpaid insurance if he determines in his, quote, sole and absolute discretion that the fire victim did not use reasonable efforts to obtain available insurance. And the only circumstance that the trust documents say is, quote, reasonable efforts is if the insurer pays the victim the full amount of the covered loses or the available policy limits. And that's it, period. So anything short of getting full recovery from your insurer, the Trustee can say is not reasonable efforts.

The trust agreement also says that the Trustee --

THE COURT: Well, excuse me. Mr. Weiss?

MR. WEISS: Yes.

THE COURT: Again, give me the practical fix. What's the practical fix?

MR. WEISS: So the practical fix, Your Honor --

THE COURT: You made it clear you're not after double recovery, so we're clear on that.

MR. WEISS: Right. We're not after double recovery. The practical fix, which is one that we had proposed, is number one, we agree that if we recover amounts from insurer, our claims can be reduced.

THE COURT: Right. That's easy.

MR. WEISS: Number two, we agreed that there can be a requirement that we take commercially reasonable efforts to go after insurance, and there should be some objective guidelines or guardrails around what that means. And after a period of time, after taking commercially reasonable efforts, if we can't recover anymore, then that should be the end of it and no more should be reduced from our claim. If we do recover more, then that credit goes against our claim.

THE COURT: Well, all right. So let's take an extreme. Again, I'll stick with a hypothetical.

MR. WEISS: Um-hum.

THE COURT: Let's say your client is owed -- has damage for 50,000 dollars and the insurer commits to pay you

40,000 dollars, when, presumably, you have a claim against the trust for ten.

MR. WEISS: Um-hum.

THE COURT: But then the insurance company only pays half of that forty and then it goes into insolvency. Do you really think the Trustee would have any basis to deny you at least the additional entitlement to the 20,000 that you are legally no longer able to get? You following? I hope I haven't lost you on my hypothetical, have I?

MR. WEISS: I don't think that the trustee should have a basis to deny that.

THE COURT: But is there any reason to believe the Trustee -- I mean, look. What if a judge says I don't like the color of your tie; I'm not going to allow you your 20,000? That's not what judges do, but what I'm saying is, why don't I assume that the Trustee will do the right thing, also? Why shouldn't we assume that?

MR. WEISS: Because that's not what the trust documents say, Your Honor. I don't have any -- as you indicated at the beginning of the hearing, we're not impugning the Trustee or the good faith of the Trustee. But what the trust documents say is that -- the trust documents actually require the Trustee to consider, among other things, the amounts that could or should have been paid under a policy of insurance. So it doesn't say that they can consider that or

ought to take into account insolvency. It actually says shall consider amounts that should have been paid. So should have been paid, if you take that to extremes, could mean an amount that, but for the insolvency, they should have paid, and that's what the documents say.

So what the documents allow the Trustee to do, and it wouldn't be impugning the Trustee if they did this because that's what it says they shall do, the Trustee can ignore amounts that haven't been paid at all for whatever reason, like you said, the insolvency, and they don't have to take into account just the amounts that are actually paid.

THE COURT: I need to -- I need to interrupt you only to tell you --

MR. WEISS: Sure.

THE COURT: -- that it's time to share your time with Ms. Winthrop.

MR. WEISS: Okay. I wanted to go quickly into the Garbel (phonetic) and Ferraro (phonetic) cases --

THE COURT: Okay.

MR. WEISS: -- that are cited in the TCC's brief because the only thing that those cases stand for is that amounts actually paid are no longer part of the collateral source rule, but they don't say anything about unpaid amounts, and unpaid amounts are not subject to subrogation by the insurance company. So those unpaid amounts, under Garbel and

Ferraro, cannot be deducted from a claim or from a victim's recovery against a tortfeasor, and those cases make that very clear. So those cases, we believe, actually support our position and don't support the TCC's position, Your Honor.

THE COURT: Okay.

MR. WEISS: So I'll turn it over to Ms. Winthrop and if --

THE COURT: Okay. Thank you.

MR. WEISS: -- and if there's any rebuttal, Mr. Mintz will cover it later.

THE COURT: Okay. Ms. Winthrop?

Thank you.

MS. WINTHROP: Good morning, Your Honor, Rebecca Winthrop on behalf of the Adventist claimants, and I appreciate you acting as our stopwatch for the --

THE COURT: But I'm not very accurate. The Chief Justice is much more accurate than I am when he does it.

MS. WINTHROP: We need the one that hit the button and let it launch.

My part, Your Honor, is to address the issue of Ivanhoe and how the -- frankly, the lack of treatment of Ivanhoe in the TCC's brief. Because on the one hand they assert that Ivanhoe doesn't apply because it's all about state law and the collateral source rule and then on the other hand it says, oh, by the way, we ignored two Ninth Circuit cases.

So first of all, we do believe that the collateral source rule does address what can and cannot be applied against the allowed amount of our claim; that's fully briefed. But we also have further support for our position in the Ivanhoe case, which we believe is binding precedent on the treatment of payments of third-party nondebtors. And basically, the amount of our claim is allowed in the full amount, without any deduction, but recoveries from all sources cannot exceed one hundred percent of our claim to avoid double recovery. And we aren't trying to get double recovery.

And I know in a minute you're going to ask me is, so what's my solution? This is an accounting issue, Your Honor. We agree that actual payments should be deducted from our claim. A lot of this information is already available through information they're getting form the subrogation claimants. So it's an accounting function that, by the time they finish doing each level of distributions on a pro rata basis, that they can reach out to the claimant and determine, along with other important information they need for distributions, how much has been paid. So we believe that this is an accounting function, not a substantive rights function.

THE COURT: I wish it were that simple. I don't think -- just tell me again, why is it that easy? I'm not following you.

MS. WINTHROP: I'm sorry, I couldn't hear you. I'm

sorry.

THE COURT: I'm just not following how I can treat this as an accounting function, which sounds like an easy fix.

MS. WINTHROP: Your Honor, because there are going to be a number of distributions. At each point they can determine what is the amount that has been paid. Information is going to be obtained from, I think, something like ninety-four percent of all insurers who are contributing to the -- or are part of the subrogation settlement. They will be able to provide information and, I believe, have already been providing information as to the amounts already paid, and that we have come up with several different mechanisms to suggest to them as a reasonable time for us to pursue our insurance carrier.

THE COURT: Okay.

MS. WINTHROP: So just to continue as to -- Your Honor asked for a question as to why Ivanhoe -- what you should do with Ivanhoe. We believe that Ivanhoe is binding precedent on this issue because in bankruptcy the policies are different. And I think Judge Carlson said it best in Del Biaggio when he says, "Ivanhoe values the quality of treatment by debtor's estate above the quality of overall outcomes among creditors having different rights against third parties. This choice is, at heart, a question of federal bankruptcy law."

So we believe that Ivanhoe's principles govern. It's been applied in multiple situations as part of the -- as part

of the bankruptcy process, and the only response to this from the TCC is to point to two Ninth Circuit cases that are not even in the bankruptcy context. They are in a nonbankruptcy receivership case, which involves different principles as explained by Judge Carlson in Del Biaggio.

More importantly, neither SEC re: Capital or equity funding actually support the TCC's position because they contemplated that only amounts actually received get applied against the claimant seeking recovery in both cases. And in fact, in Capital, they actual applied far less than the amounts actually received. And certainly, neither case stands for the proposition -- and no case has been cited in all of those thirty pages that stands for the proposition that the Court can deduct from the allowed amount of the claim more amounts than those actually received.

And then, finally, with respect with the final area of importance to understand is the big point in the TCC's response is that this is all to avoid double payment by the estate. We've got one pot for the subros, we've got one pot for the victims, and if we allow anything different to occur, then it would allow for double payment.

Well, in the case of Adventist Health and any other one that is insured by an insurer who is not part of the TCC's settlement, there can be no double recovery because we aren't getting -- our insurer is not getting any distributions. They

didn't file a proof of claim at all. Therefore, there is no problem and no issue with double payment in the case of Adventist Health and anyone else who is insured by insurers that are not part of that pot.

And then finally, I'll just address briefly the issue of your concern about the trust documents permitting disparate treatment among claimants. I believe that the TCC is -- they again argue that the trust can impair the amount of an allowed claim by deducting any potential insurance recoveries. That is not correct. It's not permitted by Ivanhoe.

And I think what they're doing is conflating the allowance of a claim with the distribution on account of that claim. And a majority cannot artificially reduce an allowed amount of claimant's claims. The Bankruptcy Code and Ivanhoe do not permit that.

THE COURT: Okay. I think now your time is up, and Mr. Mintz has the last ten minutes, okay?

MS. WINTHROP: Thanks, Your Honor.

MR. MINTZ: Thank you, Your Honor.

MS. WINTHROP: I appreciate your time.

THE COURT: Ms. Winthrop, if you have one more thought or so, go ahead and make it if you'd like.

MS. WINTHROP: Your Honor, if you're concerned about the revoting issue, I can certainly address that. If you're not concerned about the revoting issue, I won't.

THE COURT: Okay. Let's not worry about it now.

MS. WINTHROP: Okay.

THE COURT: Mr. Mintz, I believe you have about ten minutes, right?

MR. MINTZ: Yes. That's correct, Your Honor. Thank you. Thank you for affording us the time today, and I'm going to address the remaining what I'll call miscellaneous issues that we raised in our objection.

First, I want to emphasize that our goal here is not, as the TCC has contended in its papers, to obtain special treatment for our claims. Our goal is exactly the opposite. We want to make sure that our claims are afforded the same equal and fair treatment as other fire victims and that we are not singled out for special treatment by virtue of the relative size of our claims or for other reasons.

It was the TCC who initiated our concern in this regard. The disclosure statement included a very cryptic statement that said special consideration may be given to the treatment of large fire victim claims to ensure that large claims didn't impact the recoveries of other claimants. If you look at the prior page of the disclosure statement where that statement was -- which was on page 25 -- if you go to the prior page, it says that statement about special consideration was provided by the tort claimants' committee. So it came from them, and that concerned us. And we were also concerned that

the original filed version of the trust documents didn't include language providing for pro rata treatment.

With respect to those issues, we worked with the TCC, and with their cooperation, we've addressed those matters. The trust documents now make clear that payments to fire victims are to be on a pro rata basis and that claims will be treated the same regardless of their magnitude.

THE COURT: Well, doesn't that, therefore, moot the concern about what was in the disclosure statement? Which is only a disclosure statement. It's not the charter. It's not the operative document, so --

MR. MINTZ: Yes, Your Honor. And I provide this just by way of background to lead into the first want point I want to touch upon, which is we need to make sure that those essential core protections -- the pro rata treatment and equality of treatment regardless of size -- are built into the trust on a permanent basis and can't be vitiated by subsequent actions.

And particularly, the trust documents and the trust agreement allows the trustee, with the consent of the trust oversight committee, to make virtually any amendment that they want to the trust agreement. That means that the day after the effective date, in theory, they could choose to strip the very protections I just referred to you. So they could take away the pro rata treatment. They could take away the protection

that large claims aren't going to receive special treatment of some sort. We could be back to where we were before.

Their answer -- the TCC's answer here is only, well, the trustee can't do it himself. He needs the approval of the trust oversight committee, so that's a protection. But that's cold comfort for us. If they collectively decide to make these changes, they shouldn't be able to do that. According to --

THE COURT: You don't think that would be -- that would be contrary to the finality of the confirmation order?

MR. MINTZ: Well, Your Honor --

THE COURT: I mean, when you said --

MR. MINTZ: -- the --

THE COURT: Well, wait a minute. When you take -- let's say that the trustee and the oversight committee can do a lot of mechanical or administrative changes on their own, which I think would be a good thing. But they couldn't go back and do something that was inconsistent with the confirmation order, could they?

MR. MINTZ: They could, Your Honor, and that's our point.

THE COURT: But how could they? I mean, how --

MR. MINTZ: The trust agreement can be amended in any way.

THE COURT: Well, I understand about amending.

MR. MINTZ: -- (break in audio) approving the trust

agreement.

THE COURT: I mean, could they amend it to say that your client won't get paid at all?

MR. MINTZ: I think in theory, yes, Your Honor. I don't think there's any constraint in the document that would permit that. And really, that's the risk we want to protect. I mean, you gave an example that -- I don't think we're particularly concerned that they're going to do something like that, Your Honor, but they did have something in mind with respect to large claims that they were focused on in the disclosure statement and we're --

THE COURT: I know, but you've told me that they --

MR. MINTZ: -- it concerns us.

THE COURT: You told me they fixed that.

MR. MINTZ: Your Honor, if the order -- if the confirmation order's going to provide that the trust agreement can't be amended in the kinds of ways you're talking about, that would address our concern, Your Honor. We just want to make sure that there aren't amendments -- I mean, what we proposed, our solution was to say any material amendments couldn't be done without Court approval.

I would accept Your Honor's suggestion that they can't make changes that fundamentally alter the rights that are being granted to creditors under the plan like the ones I'm talking about. Some constraint like that would address the concern,

but in the absence of anything, they theoretically can do whatever they want. And that's consistent with the confirmation order, because the confirmation order is approving the trust agreement as it stands, which has that built-in mechanism.

THE COURT: Okay. But I mean, we -- and as I'm sure you know from your own experience, confirmation orders often solve a lot -- fix a lot of things that weren't necessarily in place under a plan. And obviously, when you start to mess with a plan and a confirmation order, it's an invitation to confusion and ambiguity but not on big-ticket items, perhaps. Anyway, go ahead and --

MR. MINTZ: Yeah. I mean, the simplest fix that we suggested, Your Honor, was that to the extent that there are material amendments, substantial, substantive amendments that are being made that affect our treatment and the kinds of things that we're talking about here, those should be subject to Court approval. I think that's a very easy kind of fix that you see in documents of this type all the time.

The next issue, Your Honor, is Section 5.9, which addresses potential conflict positions of the trustee. Based on the TCC's response, it's not clear to me if we have a fundamental dispute or just a drafting issue. As we read the provision, Section 5.9 allows the trustee to hold nonpassive financial interest in one or more --

THE COURT: And it certainly looked to me like a drafting issue, but Mr. MacConaghy can tell us that. I just didn't -- I didn't think that Justice Trotter was going to go out and buy up shares of claims or trade or do anything else that you're worried about, but.

MR. MINTZ: Agreed, Your Honor. And we're happy to work on the drafting. The way we read it, though, suggested that as long as a disclosure was made, he could hold those interests, which was a concern for us. We can fix that drafting, assuming that's how the TCC intends it.

THE COURT: Well, Mr. MacConaghy will put that on his respond list here --

MR. MINTZ: Okay.

THE COURT: -- as soon as he's -- he's itching to speak in a minute here.

MR. MINTZ: Well, I'm getting to the end, and I know my time is limited as well. The next issue, Your Honor, is an ambiguity between the plan and the trust documents over setoff and recoupment. The plan is quite clear in regard to the fact that it does not assign the estate's offset or recoupment rights to the trust. They're retained by the debtors, and that's very clear in 5.13 of the plan.

Yet certain provisions of the trust agreement purport otherwise, and those provisions, Section 1.4 and 4.4, refer to rights of offset or recoupment that the debtors have or would

have. And the problem for us is that creates an ambiguity because it leaves the victims vulnerable to facing the same claims from the debtors and the trust.

And the TCC's answer is, well, there's no real ambiguity because the trust agreement has qualification language that says "except as otherwise provided in the plan." But that's not a sufficient answer, Your Honor. They haven't told us whether they agree that no such rights are assigned. And if they think otherwise, we need to understand that.

We think the plan is clear, and if the plan is clear, it's a nullity to say "except as otherwise provided in the plan, the trust can assert offset rights". We can't be left guessing about this, and this isn't a hypothetical issue.

My client, AT&T, has a substantial ongoing business relationship with the debtors, and the debtors assert tens of millions of dollars owed by AT&T, and we're going to deal with that over the course of our relationship. And our expectation is we deal with the debtors.

But I can't be in a position where both the debtors are claiming those amounts and then the trust is trying to claim and offset against my fire victim claim. I can't be put in a position --

THE COURT: No. I understand.

MR. MINTZ: -- where I don't know.

THE COURT: I mean, I think the issue is easily

identified, and maybe there's a solution from Mr. MacConaghy's side, and maybe I'll have to think about a solution. But anyway, one more question, and then I --

MR. MINTZ: Agreed, Your Honor. I think it's a drafting issue. My problem is we've been raising this issue. It hasn't been addressed, but I do think it's solvable.

THE COURT: Okay. Mr. Mintz, I don't know if it's your responsibility or this is something that I should have asked Ms. Winthrop to clarify, so whichever of you can answer. There seems to be confusion in the briefing about the attorneys' fees issue because the brief refers to it as attorneys' lien, and yet the issue really has to do with attorneys' fees under the inverse condemnation doctrine. I'm --

MR. MINTZ: I was going to get to that issue, Your Honor.

THE COURT: Oh, okay. Yeah.

MR. MINTZ: I'm almost there.

THE COURT: Okay.

MR. MINTZ: Hopefully, I have enough time remaining.

THE COURT: Well, take the time for it.

MR. MINTZ: Okay. I don't have too much left. Before that, I was going to talk about the claimant release. Our concern there was a temporal one. We didn't like the notion that when you get your first distribution, you're releasing

everybody through the end of time for -- on a future basis with respect to things that may happen after you get your distribution even if there's some kind of misconduct or malfeasance after you sign that release.

The TCC says, well, it would be impractical to have to get a new release every time we made a distribution. We agree with that. I certainly agree, and I don't think the suggestion is that they should have to get a new release every time. But I think there's a solution that would work, which is the release should cover claims through the execution date of the release with that date being extended to each subsequent distribution date every time a claimant accepts a further distribution.

So in other words, the release would roll and extend as further distributions are made over the course of time. But it shouldn't be the case that when you get your first distribution on day one, you're releasing them from conduct that happens a year later. That's just not appropriate.

With respect to the issue of attorneys' fees, Your Honor, just to focus in on what we're talking about, we are talking about attorneys' fees that a claimant may be entitled to under applicable law. The TCC's position on this is they haven't decided yet how to deal with it, and the trust will figure out at some point how it wants to deal with that issue.

Respectfully, Your Honor, I don't think the Court can

approve the trust with that uncertainty. We need clarity to the fact that claims are going to be allowed in accordance with applicable law, and if there is an applicable legal basis to support an entitlement to a claim, including attorneys' fees, that should be part of the allowed claim.

And this relates to the same issue that Mr. Goldblatt was speaking to. Allowance is different from treatment, and how our claim is determined and the elements of our claim, our entitlement to get reimbursement for property damage as opposed to personal injury, those are things that are required by applicable law, and the trust needs to follow that.

Saying they're going to figure out later with attorneys' fees what they're going to do -- and what they could do is say we're not going to include it -- is no different from them saying, look, we're only going to pay personal injury claims, and we're not going to pay property damage claims.

THE COURT: Well, that seems like an overstatement because the state of the law at the moment, unless the Ninth Circuit or the Supreme Court changes it or the legislature changes it, is that the inverse condemnation doctrine applies and personal -- I mean, damage to personal property gives you a right to attorneys' fees as under the law, right?

So that would be the substantive law that would say that is an entitlement. And I would assume that clients like AT&T and Comcast and the hospital are all major victims of

property damage that comes under the adverse condemnation -- inverse, excuse me, inverse condemnation principle, right?

MR. MINTZ: And that's right, Your Honor. If applicable law -- if our claim under applicable governing law entitles us to a certain recovery of certain type of damages, that should be eligible within the trust, and the trust --

THE COURT: But I'm saying don't you think it's a mechanical issue of how to go about ascertaining it? In other words, if -- someone, for example, who has suffered personal injury and property damage, you have to allocate, figure out what is the amount of attorneys' fees that that party is entitled to.

Now again, your corporate clients maybe didn't have personal injury. But at some point, the trustee has to figure out who gets attorneys' fees for what portion of a particular claim it seems to me.

MR. MINTZ: Your Honor, as currently drafted, the trust documents do not contemplate any treatment for those attorneys' fees. It just says that they'll think about it. So if the solution is that they're going to be included to the extent required by applicable law and recognizing that there may be distinctions between those portions that relate to personal injury claims and those which relate to property damage claims, that would solve our concern. We're not trying to rewrite the law, but we want the trust documents to reflect

applicable law.

THE COURT: We're going to add this to Mr. MacConaghy's homework assignment. And with that, I'd like to conclude your opening argument on the objector's side. And I'll stick with the reservation of five minutes even if we're over five -- even if it's in the negative balance, that the objectors have five minutes for rebuttal.

Mr. MacConaghy, you're up.

MR. MINTZ: Thank you, Your Honor.

MR. MACCONAGHY: Good morning, Your Honor, John MacConaghy, special counsel for the official tort claimants committee. Can you hear me okay?

THE COURT: Yes. I can. And I want to know how you're allowing or sharing the time.

MR. MACCONAGHY: I have thirty-five minutes, and the remaining ten minutes is going to be split among Mr. Skikos, Mr. Singleton, and Mr. Marshack if he's still on the line.

THE COURT: Okay. We got Singleton and Marshack together; they double up? All right.

MR. MACCONAGHY: I'm not sure I'm going to take all my time.

Your Honor, the specific, unprecedented combination of problems we've asked Justice Trotter to resolve is, number one, paying all 80,000 fire claims expeditiously, consistently, and fairly; two, minimizing how much of the fund will go to pay

costs of administration; and three, minimizing how much of the fund must be held in reserve for disputed claims. We think we have done that, and we have done that in accordance with the Code and nonbankruptcy law.

Now I'm going to turn to the specific objections raised by the business claimants, and hopefully, in that process, answer any questions that the Court raised at the outset of the hearing. The first objection of the five business claimants is this: they purport to have a right to a final, de novo bankruptcy court adjudication of their individual proofs of claim.

THE COURT: By the way, I have to interrupt you. I don't know so that it has to be a bankruptcy court. I think they're saying a judicial determination.

MR. MACCONAGHY: I --

THE COURT: It could be somebody else.

MR. MACCONAGHY: Correct. There could be a abstention, which in our view is even bigger problem, but --

THE COURT: No. No. And let me -- I think you're not following my question. It could be a withdrawal to the district court. It could be relief from stay to the superior court. It means they want -- as I heard their argument, they want a judge at the end of the day, if they're not satisfied with the outcome through the nonjudge process, what we'll call the equivalent of the arbitration-type procedure that the trust

contemplates.

MR. MACCONAGHY: Correct. But whether it be in this court or another court, you have to give that right to 80,000 people which, in my view, is just jaw-dropping in practicality. Likewise -- and we all know that 80,000 people are not going to seek de novo review. But let's say two percent of that number does. That's still thousands of cases. This court can't handle it, and I don't think the Butte County Superior Court can handle it. Your Honor, I know the last trial I had in front of you took nine days, and it was much simpler than AT&T's --

THE COURT: Come on, Mr. MacConaghy. I could blame -- I could blame anyone I want on that one.

MR. MACCONAGHY: Yeah.

THE COURT: And you can blame me.

MR. MACCONAGHY: I'm sorry I brought that one up, Your Honor. But in any event, let's move on.

THE COURT: No. But seriously, I want -- do you realistically, in your experience, believe that if we suddenly open the door to any courtroom, that 80,000 claimants are going to line up to try to get in court? I can't imagine that. I would think that it would be more like the two percent or three percent.

MR. MACCONAGHY: But --

THE COURT: And that's not insignificant, but it's not

this deluge that you warn about in your papers like the sky is falling.

MR. MACCONAGHY: Correct. But even 2,000 seven-, eight-, or nine-figure claims, or 250 nine-figure claims I think would --

THE COURT: Well, Mr. MacConaghy, let's just take the four people who are carrying the ball here, or the three of them: Comcast, AT&T, and Adventist. If they all want to go to trial, those would be some significant pieces of litigation, I suspect. But that's the point. They want that option, and the question is whether the law gives it to them.

MR. MACCONAGHY: And I will answer that.

THE COURT: If I made the rule that said the only people that have the right to a court are the ones who objected and showed up on my Zoom hearing today, you've got four people.

MR. MACCONAGHY: So --

THE COURT: You know?

MR. MACCONAGHY: We've talked about what we consider to be the impracticalities of this, the burden on this Court's docket, and certainly, I don't know, there's probably just three or four judges in Butte County Superior Court.

Let's talk about the alleged statutory entitlement to this right in 502(b). Section 502(b) says that if there is an objection to a claim, "The court shall determine the amount of such claim in lawful currency of the United States." So why

doesn't the word "shall" box us into this cumbersome process in the context of mass tort cases? Three reasons.

First, it is well-settled that Section 502(b) does not preclude the Court from ordering a disputed claim to binding ADR. That relief is authorized by the extension provisions in 28 USC Section 1334(c). It is also --

THE COURT: To binding ADR? What binding ADR are you referring to? I'm not aware of that.

MR. MACCONAGHY: So --

THE COURT: We send people to mediation all the time, but --

MR. MACCONAGHY: You send people to mediation.

THE COURT: But where are they bound under 1334?

MR. MACCONAGHY: 1334 alone does not say that the court can order binding ADR. The point of bringing up 1334(c) and Bankruptcy Rule 9019(c) is to say that the Court does not have to adjudicate the claim.

But second -- and the mandate of Section 502(b) does not necessarily survive the confirmation of a plan. Section 1123(a)(3) and 1124 of the Code say that a Chapter 11 plan can impair legal and equitable rights. I just looked at the text during counsel's argument of the statutes. They don't say allowed claim; they just say a claim.

The right of a claimant to an individual adjudication of its claim is a legal right. That legal right can be

compromised or impaired through a Chapter 11 plan, provided that the other requirements of confirmation are met.

THE COURT: So go back to -- I know you weren't active in the case, perhaps, because of your role as special counsel, but is it clear from the disclosure documents and the plan that -- and today is the last day to vote -- that everybody who has the right to vote could have understood from the disclosure statement that this is the end of the -- there's no right to a jury and that by voting for the plan, you do not -- and strike jury; I want to correct that -- right to a day in court on an adjudication of your claim?

MR. MACCONAGHY: Your Honor, I'm very sorry, but I cannot honestly answer that question due to my very recent involvement in this matter. And I'm going to have to defer that one of my co-counsel.

THE COURT: Well, I can recall a hearing -- I've forgotten which; there have been so many. But a number of you on the phone or on the call will remember this, that Mr. Julian and I, I believe, were in -- had a discussion about the whole question of reservation of rights of people, if they aren't satisfied with the process, to ultimately go to a jury. And then that -- I recall again, later, Mr. Julian speaking to the subject that the negotiated result under the current arrangement did away with that option.

What I'm just asking you -- and that's okay. I

understand. You can't have memorized these long documents, but I don't know whether it was that clear to the voters that they're giving up that right. Let's move forward. You've got a number of issues, and particularly, these practical questions that I need you to tell me whether they're --

MR. MACCONAGHY: And I would say to that, Your Honor, if that's a problem with the plan and the disclosure statement, that is a confirmation issue.

THE COURT: Well, yeah. Right. But it's still an issue. And this is a form of a confirmation issue that we're dealing with today.

MR. MACCONAGHY: Right.

THE COURT: Go ahead.

MR. MACCONAGHY: Anyway. So we think of the pre-petition rights and liabilities of the debtor and its creditors as being one bundle. This becomes a different bundle of rights and liabilities on the petition date when an estate is created, and yet a third bundle of rights and liabilities on confirmation of a plan.

Under Chapter 11, that third bundle of rights, in this case, those established by the trust documents, is fixed by a majority vote of creditors in a similarly situated class, not unanimous consent. If restructuring could only be done by consensus, there would be no need for Chapter 11.

This case illustrates perfectly why that is fair.

Five large institutional creditors should not be able to dictate what happens to 79,995 other people, and they should not be able to carve out unique, special treatment for themselves, which is what we think they are trying to do. Unless the rights, procedures, and restrictions imposed on the pre-confirmation estate by Chapters 3 and 5 of the Code are specifically reserved in a plan, they fall away on confirmation.

It is often said that a Chapter 11 plan is a new contract between the debtor and its creditors. The Ninth Circuit said that in Miller v. United States, 363 F.3d 999, 1004. This is our fundamental point. Like any contract, that Chapter 11 plan contract can include a binding ADR provision if the votes are there.

Third, the absence of final judicial review over any particular fire victim's claim against PG&E is not a denial of due process. In this particular case, the business claimants have had and will have multiple opportunities to appear and protect their rights before this Court, including objecting to the TCC's restructuring support agreement, objecting --

THE COURT: That's already behind it. That's all done.

MR. MACCONAGHY: Yes. But they had it -- objecting to the appointments of Justice Trotter and Ms. Yanni, and the upcoming objection to the confirmation of the plan. In our

case -- in our brief, we have cited a number of cases in and out of Chapter 11 where similarly situated claimants are required to resolve their individual claims by binding ADR without backend judicial review. Now, Mr. Goldblatt focused on some of the mass tort cases, which do indeed in some of those instances have a provision for a backend bankruptcy court oversight of the individual claims resolution, but that is not constitutionally or statutorily required.

We've made reference in our brief to so-called nonopt-out class actions under Federal Rule 23(b)(1) and (b)(2), where you can have a situation where once a class of claimants is identified and before the court, the court can approve a gross resolution of the matter. And then those individual claimants don't have a right to some further court review for a bigger share of the pie, which is what the business claimants are seeking here.

We think there is ample precedent for the process we have constructed, and that should be allowed in this particular case. Now, why is this ADR --

THE COURT: Does this case resemble Takata at all?

MR. MACCONAGHY: I think it's -- well --

THE COURT: It's one thing to lose your airbag. Of course, there may be some small number of people who suffered injury or death from that, but most of the claims in Takata were just somebody that had to get their airbag replaced.

That's not quite the same as this case.

MR. MACCONAGHY: Well, it isn't quite the same as this case.

THE COURT: Nothing's the same as this case.

MR. MACCONAGHY: Nothing is the same as this case. Right, Your Honor. And the --

THE COURT: All I'm saying -- what I was trying to get at is I can't lose a whole lot of sleep about denying someone a day in court if he wants to get his airbag replaced. And I don't know whether the small number of victims who suffered personal injury or wrongful death -- where they are in the Takata case. I don't know, but.

MR. MACCONAGHY: Your Honor, my understanding is on the Takata case, there were several victims who were very seriously injured by these airbags. And in that regard, the Takata case is similar to this case in that unlike many other mass tort cases, here there was a hybrid of -- here and there, there's a hybrid of property damage and personal injury.

And the similarities of the two cases are the numbers of claimants and the impracticalities of giving even a significant percentage of those claimants final judicial review of the ADR process.

Let me go on and explain why this ADR process as written is so important in this particular case.

THE COURT: I understand it's important. The question

is whether it's legally sustainable.

MR. MACCONAGHY: Yes.

THE COURT: It's important. There's no question.

MR. MACCONAGHY: Okay.

THE COURT: And I am personally of the view that if I authorize some access to court, I still believe that a vast number of them will take advantage of this procedure. But some will not, perhaps.

MR. MACCONAGHY: Yes. So let me talk about one of the cases that was relied on by the business claimants and we probably should have discussed in greater detail in our brief, and that is Judge Patel's ruling in In re Elder. Elder is heavily relied upon by the business claimants in support of their argument that there must be some backend bankruptcy court review of post-confirmation ADR. There are three reasons why this is not the case.

First, Elder (phonetic) was not a mass tort case and did not involve any of the logistical challenge presented by the instant matter. Elder involved two small art galleries. The bankruptcy record for Elder can still be viewed on this court's PACER system. There were only 103 proofs of claim filed in that case. This is a number which could have been easily resolved by the bankruptcy court without any ADR. The 80,000 claims here is not.

Second, Elder did not consider Bankruptcy Rule 9019(b),

which is tailor-made for mass tort cases. Rule 9019(b) unequivocally dispenses with the need for individual claims adjudications in a mass tort case. Rule 9019(b) states, "After a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice."

THE COURT: I don't understand why you're relying on that rule. That doesn't do -- that's not relevant to here because the trustee, under any 9019 settlement, can only settle with people who want to settle. It doesn't -- 9019 doesn't say to the trustee -- and you represent a lot of trustees -- that while the trustee says, Mr. Defendant, I'm going to settle by offering you 200 dollars, and you're it. That's all you get. Period.

MR. MACCONAGHY: Well --

THE COURT: And that --

MR. MACCONAGHY: Your Honor, that's -- excuse me. That's what 9019(a) says. The way I read 9019(b), which is rarely used, is that the trustee can come into court and say, there's this class of people who's going to be compensated by this 13.5 billion dollars I'm getting from PG&E. Here is the way I'm going to divide that up, quote, within a -- within the class of victims.

And then the Rule says if that settlement is approved,

the bankruptcy court need not further involve itself in parsing out how much individual creditors get from that fund.

THE COURT: Is there any authority -- I don't -- because I don't think the Elder case goes there -- that says that the trustee or, here, the representative of the estate can impose upon an unwilling opponent a 9019 outcome -- 9019(b) outcome?

MR. MACCONAGHY: No.

THE COURT: Well, then why are we talking about it unless there's --

MR. MACCONAGHY: Well, there's no authority -- based on my research, it's such an obscure rule that there's no authority on it one way or the other.

THE COURT: Okay.

MR. MACCONAGHY: But reading the text of it, it seems to justify the process that, if we consider the plan confirmation process as this class hearing and notice referenced in 9019(b), there is a -- statutorily, doesn't have to be a further hearing on an individual claim.

THE COURT: Is there anything in the plan or the disclosure statement that tells the thousands and thousands of people that were solicited, by the way, it doesn't matter what you do, we're going to stick this down your throat under 9019(b)?

MR. MACCONAGHY: Well, 9019(b) isn't referenced, but

it is my understanding that the trust documents and the claims resolution procedures have been circulated to all parties-in-interest in the case.

THE COURT: That's right. And four of the major players -- or five have objected to it.

Anyway, let's go ahead. You need to come back to the practical problems that you need to tell me, and let's -- so let's take that, briefly. What about -- you've heard the opposing counsel suggest practical solutions. Can -- did you make a list?

MR. MACCONAGHY: I -- what do you want to talk about first, the trust documents or insurance?

THE COURT: No, let's take it in reverse order. I have -- as the -- what about the notion of having the trustee cannot do things that are contrary to the letter of the plan? The trustee can't propose changes to the trust that conflict with the charter of the plan?

MR. MACCONAGHY: Well, Your Honor, we think that's a red herring because this is going to be a Delaware trust, and each of these five claimants and thousands of other people are beneficiaries of that trust. And if, in the very unlikely event that there was to be some material change in the trust document that resulted in one beneficiary being newly and substantially impaired, those trusts beneficiaries would have redress under nonbankruptcy law.

THE COURT: To the Delaware's Chancery Court, huh?

MR. MACCONAGHY: Delaware Chancery Court and --

THE COURT: I thought the bankruptcy court was where this plan got born and would be enforced, but --

MR. MACCONAGHY: You mean --

THE COURT: -- it sounds like you're not consenting to that alternative, here.

MR. MACCONAGHY: And I don't know that -- my understanding is that when the plan is confirmed, PG&E is going to want to get a final decree as quickly as possible, so I don't know that the -- it's in the best interest of anybody for this court to maintain lingering jurisdiction over something that is really a very remote hypothetical.

THE COURT: You might be interested to know that in the 2001 PG&E case that I am still the presiding judge, they still haven't gotten final decree, so they're up to the nineteen-year mark.

MR. MACCONAGHY: It really is a Chapter 22, then, I guess.

THE COURT: What about the attorneys' fees issue? And isn't this a drafting error that the right for the personal injury -- I mean, excuse me, the personal property damage claimants to get attorneys' fees is a matter of California law?

MR. MACCONAGHY: Yes, Your Honor, that's a good point, and our brief was mushy on that subject. And let me explain

where we come out. It was our intention, in the claims review procedures, to simply adopt the American rule and provide that attorneys' fees would be a matter between the client and the attorney. Now, when we're dealing with claims sounding in inverse condemnation, as Mr. Mintz and the Court noted, those attorneys' fees are part of the underlying claim itself.

The first sentence of the claims resolution procedures requires the trustee to fairly compensate claimants "in an equitable matter consistent with California law". So I think that resolves the issue. And if there is a lingering concern about that after the conclusion of this hearing, my suggestion is that counsel perhaps talk to the trustee's proposed counsel about doing the wordsmithing necessary to fix that. But it seems to me that that language in the claims resolution procedure covers it.

THE COURT: Okay.

MR. MACCONAGHY: The claim has got to be treated in accordance with California law.

THE COURT: Okay, I'm -- Mr. MacConaghy, I want you to use your remaining time for what's left on your list and your cocounsel.

But Mr. Mintz, you've got a homework assignment. Your homework assignment is to deal with the trustee's prospective counsel and see if you can come up with some language that solves the attorneys' fee problem. You don't even have to

respond to me. I see you're on mute. That's your assignment.

Go ahead, Mr. MacConaghy.

MR. MACCONAGHY: Your Honor, I think I've said everything we have to say on the question of de novo bankruptcy court review of the ADR, and I want to turn now to the insurance question. The business claimants have clarified a very important concern that we had in that it seems to be -- it seems that everybody is now in agreement that there can be no double recovery, unlike one gets in a common-law application of the collateral source rule.

THE COURT: Yeah, let -- we shouldn't even waste time even using the phrase double recovery. Every lawyer in this argument has conceded the point. Nobody's after double recovery.

MR. MACCONAGHY: Okay.

THE COURT: And add that -- the judge to the list. No double recovery. But what do we do --

MR. MACCONAGHY: So --

THE COURT: -- about the other issue?

MR. MACCONAGHY: So what we're talking about is to what extent the trustee can incentivize claimants to diligently pursue their carriers. The trustee, as I understand it, is not going to demand an A-plus effort in bad-faith litigation to get recovery from carriers, but it's very important that reasonable efforts be taken and there's a grave concern on our part -- and

I'll bring up the issue of Adventist. I can be corrected by counsel for Adventist if I'm wrong. And it's our understanding that Adventist has a very odd policy that requires it to first pursue the -- a tortfeasor in a situation like this. And only after it exhausts its avenues of recovery against the tortfeasor can it go back and get money from its carrier.

Now, we're very concerned about that with an entity like Adventist because, of course, somebody that runs hospitals has huge underwriting issues every time they want to get covered, and there can be an incentive on somebody like Adventist to say, we're just going to see what we can get out of the claims -- out of the fire victims trust claim and then let our carrier off the hook because we don't want to worry about getting our premiums increased in succeeding years. That's the reason why the trustee wanted this language in there requiring the insured claimants to take reasonable steps to maximize the recovery out of their insurance policies.

The other reason why we don't think the language regarding the insurance offset should be limited to monies actually paid is that it's my understanding that, in connection with the negotiations of establishing the subrogation wildfire trust and then the amount of the fire victim's trust, that it was brought -- the notion of unexpended reserves and the billions of dollars booked by the carriers was factored into that. So we don't want to agree to a insurance offset

provision that doesn't take the advantage of these unfunded insurance reserves. So that's why the trustee wants a provision in there that any insured claimant will take reasonable steps to recover whatever policy proceeds they have.

THE COURT: But if the hospital has a policy that doesn't even allow them to recover until they've exhausted their claim against the tortfeasor, then they've made the case. They've taken all the reasonable steps because there aren't any that they can take, as a matter of contract, so the trustee has to honor every dollar they claim. So that seems to be circular to me.

MR. MACCONAGHY: Well, there's a difference between recover and collect.

THE COURT: Well, I know.

MR. MACCONAGHY: I think that, in a situation where there's the magnitude of the Adventist claim, which I understand is a billion dollars, you can get an award from the fire victims trust, a likely estimate of distribution, and then go to the carrier before you get any money.

THE COURT: I don't know, I -- we can't turn this into a one-on-one for Ms. Winthrop's client --

MR. MACCONAGHY: Yes, yes.

THE COURT: -- and DCC. But the question is whether we need -- it can be dealt with in the trust. Go ahead and make the rest of your arguments because you've only got a

couple more minutes, and you've got some other folks waiting patiently.

MR. MACCONAGHY: Your Honor --

MR. SINGLETON: Your Honor, before Mr. MacConaghy continues, he's welcome to take my time. He's addressed the issue that I was going to raise.

THE COURT: Okay, Mr. Singleton. Thank you.

MR. MACCONAGHY: Thank you, Mr. Singleton, but I'm about done.

And I just want to conclude with a vignette. The Patrick (phonetic) and the Norrbom fires stopped within a half a mile of my house. As soon as my neighbors and my family returned to our homes, hundreds of handwritten signs spontaneously popped up all over the North Bay, many with American flags. Thank you, CAL FIRE. Thank you, first responders. You saved our town.

The people at this hearing are the final responders for the victims of this nightmare. Are we going to be thanked by these 80,000 victims for getting them prompt and fair compensation for their burnt bodies and lost homes or are we going to be scorned for designing a system -- we think the one urged by the business claimants in its objection, that puts ordinary people to the back of a long line, takes years to get a payout, and costs a fortune to administer? The business claimant objection should be overruled. Thank you, Your Honor.

THE COURT: Okay. Thank you, Mr. MacConaghy.

Mr. Skikos and -- well, Mr. Singleton, you wanted to be heard, and I believe Mr. Marshack.

But why don't we start with you, Mr. Skikos?

MR. SKIKOS: Good morning. Can you hear me?

THE COURT: Yes, I can.

MR. SKIKOS: Your Honor, I think a lot of this is a result of us being under a tight deadline under a 1054, which has created some uncertainty. The issues that are being raised are not issues that should be the subject of a one-week brief. And let me start with the insurance issue.

So you asked about insolvency. Insolvency is covered under 2.6 under good cause. You're at -- and if you go through 2.6, 2.6 with respect to the insurance issues is consistent with what Mr. Weiss said. Under 2.6(c) it's you're required to exercise reasonable effort or -- efforts to determine the amounts could or should have been paid had you exercised your reasonable efforts. And you go through the language of 2.6, and the legitimate concerns that are raised by the business entities are actually addressed in it.

But the problem with this case is that we're continually in a state of rush. And so the issues with respect to 2.6 and dealing with the insurance companies came up for a very specific reason, that with the policy of this case and the agreements that we reached is that the insurance companies

should be able to pass their coverage obligations into the trust. That's why 2.6 was drafted, that's why the made-whole release was drafted.

Judge Trotter and the trustee has many options for people who are suffering with their coverage, unjustly or otherwise, and it's all in here. You can take an assignment. You can -- the good cause exception could say, you know what? For this particular insurance carrier and this particular fire victim, you're not going to end up with amount of total coverage, you'll end up with total damage minus amount paid.

All of this has been in consideration to be consistent with the integrated plan that we reached with the insurance companies, with the debtor, with the shareholders, with the government entities. It's all an integrated system. And the concern that Mr. Weiss raised about commercially reasonable efforts is actually in the document. So --

THE COURT: I don't mean to interrupt you, Mr. Skikos. I need to interrupt you. I've gotten a little prompt from my Zoom conscience here to have you state your name for the record, but it's also for the benefit of people who are listening but can't even see you on the screen. I know your name, but just go ahead and restate it, please.

MR. SKIKOS: Yes, Steven Skikos.

THE COURT: Okay, and that's the -- and we don't -- I mean, we don't have many more speakers left, but we need to

remember to do that.

Go ahead and finish up.

MR. SKIKOS: Right. So that's -- with respect to the insurance issue, if -- this is a plan confirmation issue. It is not an issue that should be adjudicated right here because there's -- it's -- the fundamental problem with this issue is a misunderstanding of how this actually works. If they --

THE COURT: Well, can I --

MR. SKIKOS: -- actually go through two --

THE COURT: But I have to interrupt you. This case, of course, is -- we keep saying how this -- we're moving quickly. We have been breaking out legal issues for months. We did it with inverse condemnation, we did it with post-petition attorneys' fees, we did it with the make-whole. This was another one. So and because we've got the clock ticking. And so you said, well, this shouldn't be dealt with in a week, it's a confirmation issue. Well, guess what? The confirmation trial starts in what? Fourteen days? So it's an issue, it -- it's an issue. So the question is do you -- you're saying, I take it, that you believe that 2.6 solves the problem that these objectors have complained about. Persuade me.

MR. SKIKOS: Yeah.

THE COURT: Show that that's the case. Show me how I know that.

MR. SKIKOS: Okay, so if you go through 2.6, the 2.6(c) has the exercise of reasonable efforts. It has the amounts that'll be deducted could or should have been paid had the fire victim taken reasonable efforts. It has an exception in 2.6(e) for good cause. It has procedures in 2.6(d) to assist claimants to recover the full amount due to the claimant under the applicable insurance policy where the claimant requests the assistance.

And the goal here to -- is to ensure that what is settled in subrogation is settled in subrogation and what is settled in the fire victim trust is settled in the fire victim trust. Because there is a tremendous risk that the billions of dollars of reserves could be transferred over to the fire victim trust, and that is unacceptable risk in a limited fund context.

Second, this is a limited fund. It's somewhere around 13.5, depending on what the value of the stock is. It's a limited fund within the bankruptcy. And what we -- the design of the trust was consistent with MDL and JCCP mass tort practices. The goal was to avoid Dow Corning and other mass tort bankruptcies. Dow Corning -- our clients entered into the Dow Corning bankruptcy in 1995. Fifteen years later, they hadn't been paid. The Metabolife ephedra bankruptcies, which Justice Trotter ran, Twinlabs, et cetera, were in-and-out in terms of allocation with a year-and-a-half.

THE COURT: Again, we're not here to test the good judgment of Judge Trotter. The question is what to do about it here. So --

MR. SKIKOS: Right.

THE COURT: -- your point --

MR. SKIKOS: So here --

THE COURT: Your point is --

MR. SKIKOS: -- where there are --

THE COURT: Okay, your point is that the insurance issues are dealt with in 2.6, and --

MR. SKIKOS: Correct.

THE COURT: -- and that's what I, like -- I don't know --

MR. SKIKOS: Okay.

THE COURT: -- that's what I gleaned from this discussion.

MR. SKIKOS: And with respect to the systems that exist in the trust relating to the claims allocation process and the Court's raising of issues relating to that, the systems are designed consistent with mass tort practices created by MDL judges who are appointed by the MDL panel, and created by JCCP judges who are -- deal with the judicial counsel.

1.6, which is the jurisdiction section, is consistent with the very procedures that federal judges who run mass tort MDLs set up to ensure that the people who run the allocation

process are experts in running allocation process, that they bring to them claims administrators who are experts in running claims administration. So in dozens, if not -- well, at least dozens of mass tort cases run in the federal practice or in the California JCCP practice, this system that exists in this plan is consistent with that. And --

THE COURT: The --

MR. SKIKOS: And there is a --

THE COURT: The point --

MR. SKIKOS: Go ahead.

THE COURT: The point is I have to make sure it's consistent with the bankruptcy law. And of course, the professionals, the lawyers, and the judges that have dealt with all those cases are all entitled to the praise that they're entitled to, but we're operating under a different set of rules called the Bankruptcy Code, that's all. And I understand your point. You needn't defend the outcomes in all those places, and I -- because I respect them and look to them for guidance. The question is whether I can look to them for certainty in -- legal certainty for purposes of the plan. But I don't want to turn this into a tutorial. I got your point. I (indiscernible) --

MR. SKIKOS: Well, the two points -- you raised a practical issue.

THE COURT: -- we need to wrap up. We're getting over

to the (indiscernible) --

MR. SKIKOS: I know.

THE COURT: -- deadline.

MR. SKIKOS: We have to -- I would appreciate the opportunity to hit the practical issue you raised.

THE COURT: Quickly.

MR. SKIKOS: Very quickly. I could outline for Your Honor in an hour the complicated process that goes about setting an allocation process and involves the evaluation, valuation --

THE COURT: Now, why don't you --

MR. SKIKOS: -- budgeting, which I won't do. But if you allow folks, anybody, to go -- to say, I'm unsatisfied with this process and I'm going to take this process in to court, then the budgeting unravels. Every -- there's 13,000 business claims in this case. There's 80,000 claims in this case. Every single category of case, twenty-five different categories, has to be evaluated, run under applicable law, and then has to be reevaluated if there's an appellate decision and a de novo review. There is -- we have done this process successfully dozens of times. There is very little, if any, appellate review on this because it's been successful. And the systems that are in place in here are consistent with the exact same systems that have been successful over and over and over again.

And unlike Dow Corning, in which, as of two years ago, our clients were still getting paid, we want to avoid that. And so there's other bankruptcy precedent that exist, there's other fire precedent that exist, there's other PG&E cases that exist that say look, there -- this is a good group of people to run this process and this is how it should be run. Because it --

THE COURT: Okay. I think I share -- you're repeating yourself. I'm going to cut you off and wrap this up.

Mr. Singleton wants to be heard, and I'm going to let -- again, I can only do this so long. I can -- I can't keep this hearing going. I got the point, I've read your briefs. And again, this is not about questioning or criticizing what are good procedures in the state system.

Mr. Singleton, you offered up some time to Mr. MacConaghy. Do you want some time of your own?

MR. SINGLETON: Your Honor, just very briefly. Mr. MacConaghy addressed the initial issue that I was going to raise. But I did just want to -- oh, wait. I'm sorry. For the record, Gerald Singleton.

I did just want to direct the Court's attention to section 2.6, subsection 3 and subsection 4. And this is in response to the Court's question earlier when the Court was asking the specific portions of section 2.6 that addressed the concerns raised by the parties making the objections.

Subsection 3 reads as follows. "Whether the fire victim has exercised reasonable efforts to obtain all recoveries available under policies of insurance for damages or losses arising from or attributable to the wildfire".

And subsection 4 reads as follows. "The amounts that could or should have been paid under a policy of insurance to the fire victim for damages or losses arising from or attributable to a wildfire had the fire victim taken reasonable efforts to obtain an insurance recovery for such damages or losses".

So Your Honor, we would simply respectfully submit that that portion which addresses specifically what the trustee shall consider in determining the amount of available insurance recoveries adequately addresses the concerns that the objectors have raised.

THE COURT: Thank you very much.

I'm going to turn to the objectors for five minutes for rebuttal, and then I'm going to conclude the hearing. We've gone way over and I'm not going to go beyond that argument. So let's see. I forgot who's going to do that.

MR. MINTZ: Your Honor, it's Benjamin Mintz, counsel for AT&T.

I'm going to --

THE COURT: All right, Mr. Mintz, okay, that's right. (Indiscernible).

MR. MINTZ: I'm going to take the rebuttal. Ms. Winthrop asked for a minute of my time, so I'm going to run through the issues that I wanted to hit quickly.

I wanted to start with Rule 9019(c). Mr. MacConaghy talked about binding ADR and the ability of the court to send claimants against their will to binding ADR? 9019(c) says otherwise. It says --

THE COURT: I think he cited B, as in baby. 9019(b).

MR. MINTZ: 9019(c), as in cat.

THE COURT: Right, I understand, but I thought Mr. MacConaghy was citing B, as in baby. But go ahead.

MR. MINTZ: He was citing B, as in baby --

THE COURT: Okay.

MR. MINTZ: -- which caused me to look at C, which was right below B --

THE COURT: Okay.

MR. MINTZ: -- and he was also talking about ADR. And if you read C, it says, on stipulation of the parties, by agreement, the court may authorize the matter to be submitted to final and binding arbitration.

That means that the court can't submit a matter to binding arbitration if the parties don't agree. That's the negative inference of 9019(c), and I think it undercuts everything that's been argued today and the notion that the plan can do something that the Rule doesn't permit.

With respect to the expectation here, Mr. Goldblatt referred to the mass tort cases in bankruptcy. We have decades of experience there. It's typically a small handful of cases that ultimately resort to the judicial system.

The reason is the claimants want to get paid quickly, and having the process play out through mediation with the neutrals and the trustee, it's -- there's -- the experience is that virtually everyone avails themselves of that because it takes a lot longer time and it's a lot more expensive to have to litigate. So everyone plays out through that process and there's usually only a very small handful that slips through that. And to talk about two percent or three percent, that's not at all consistent with what's happened with (indiscernible) at this point.

An observation was made about budgeting and that if you have this judicial safety valve, that that's going to throw off the budgeting process. That exists in all of the bankruptcy mass tort cases. People deal with it. There's -- the analyses that are done with these large number of claims can be accounted for just as effectively with the judicial overlay or not. It doesn't change that analysis in any meaningful way, and they do it all the time.

With respect to the insurance issues, the provisions do not clearly provide objective criteria with respect to what is reasonable and what are the consequences of taking those

actions. And that's the fundamental of our objection. I think Ms. Winthrop may address this more, but we need more clarity. We've just heard that there was a rush to get these documents done. These documents should be done right. And if there's a lack of clarity in these documents as to what happens and how much needs to be done, the work should be done to make it clear so that everyone understands what their rights are going forward and there's certainty to the process.

A suggestion was made that with respect to the amendments, if they were done wrong, we would have redress under Delaware law. I haven't gone back to the plan, but I can say with a high degree of confidence that the plan would preclude those kinds of claims. Our protection here -- and the notion that we're getting resistance to it is very concerning -- is that the plan shouldn't be amended in a way that does an injustice to the plan. That should be easy, and I, frankly, don't understand why we're getting resistance on that. We shouldn't have to litigate over that issue after the fact. That should be a built-in protection into the plan.

With respect to your suggestion that we work on drafting issues, I'm certainly happy to do that. You had mentioned the attorneys' fee issue. I think related to that, we had the set-off and recoupment, the 509(b) -- 5.9 drafting issue, and just generally the treatment of applicable law in the context of these claims. I'm happy to undertake that

effort in that regard.

THE COURT: Okay.

Ms. Winthrop, you -- I presume you want to have your moment on the subject of your client's unique insurance coverage if, indeed, that's legally relevant. Go ahead.

MS. WINTHROP: Your Honor, I'll probably reduce this down to thirty seconds because, for some reason, Adventist Health always seems to be the target of all of these efforts.

First of all, we're hearing for the first time a new allegation on whether insurance is or is not existing. This is just one of many coverage problems that we are facing. I can't comment on the latest one raised by the TCC except that this is brand-new and not included in an objection to claim that already raised and already withdrew. So this points out the issue and the problem with the language in section 2.6, which is whether we get an allowed claim is all dependent on whether the trustee determines that we have exercised reasonable efforts to obtain all recoveries and the amounts that could or should have been paid under a policy of insurance. So that is an example of the problems that are going to be faced if this language is allowed to stand.

Secondly, there was an argument that this whole structure was based upon reserves that are apparently sitting in the subro pot. Well, Adventist Health, one of the biggest claimants in the case, has no reserves sitting in it, was never

part of that deal, and it was known at the time of the TCC -- pardon me, at the time of the subro RSA that we had a separate instance. So this is not a new issue, it couldn't have factored into it.

And then, finally, we have raised the problems and the lack of information about the TCC procedures since the 9019 motion on the TCC settlement. We filed an objection and we were politely told this is not before the Court at this time and would be addressed at a later time. This is the time.

THE COURT: This is the time. Okay.

I'm going to conclude the hearing. I am not going to take the time to have other comments. I'll make a couple of closing comments myself. I'm not going to make a ruling now, obviously.

I want to thank the presenters for the arguments. I want to thank my court staff and our staff for running what I hope has been a successful Zoom experience.

And we have a hearing on Tuesday for parties who are objecting to confirmation. I may have some observations or questions or reflections on Tuesday that are based upon matters that were argued today. I am not going to rush a ruling, and I may break it into parts. I'm not -- all I'm trying to say is when we meet on Tuesday to discuss the confirmation schedule, I hope to at least have something to say about this.

But with that, I am -- excuse me, I'm going to

conclude the hearing and wish you all well and I'll see you on Tuesday. Thank you for your time, everyone.

IN UNISON: Thank you, Your Honor.

(Whereupon these proceedings were concluded)

I N D E X

C E R T I F I C A T I O N

I, Colin Richilano, certify that the foregoing transcript is a true and accurate record of the proceedings.

_____

/s/ COLIN RICHILANO

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Date: May 19, 2020

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